INDEX

	Page
Opinions below	1
Jurisdiction	1
Questions presented	2
Statutes and regulations involved	2
Statement	2
Argument:	
I. Congress has not provided by statute that total permanent disability may be presumed for war risk insurance purposes where such condition does not exist in fact	6
II. No congressional intention can be imputed to authorize enlargement of the government's liability for disability insurance by a regulation presuming total permanent disability when such disability may not exist in fact	15
III. A verdict was properly directed for the respondent	27
Conclusion	31
Appendix	32

CITATIONS

Cases:	
Barksdale v. *United States*, 46 F. (2d) 762	7, 16
Brandaw v. *United States*, 35 F. (2d) 181	10
Bridges v. *United States*, 67 F. (2d) 320	27
Demeter v. *United States*, 66 F. (2d) 188	14
Fullerton Co. v. *Northern Pacific*, 266 U. S. 435	23
Girard Trust Co. v. *United States*, 270 U. S. 163	21
Hamilton v. *United States*, 73 F. (2d) 357	31
Hanagan v. *United States*, 57 F. (2d) 860	30
Harvey v. *Tyler*, 2 Wall. 328	23
LeBlanc v. *United States*, 65 F. (2d) 514	11
Lumbra v. *United States*, 290 U. S. 551	6, 13, 16, 29
Lynch v. *United States*, 292 U. S. 571	18
Meadows v. *United States*, 281 U. S. 271	22
Meyer v. *United States*, 65 F. (2d) 509	11
Nalbantian v. *United States*, 54 F. (2d) 63, certiorari denied, 285 U. S. 536	7
Nordberg v. *United States*, 51 F. (2d) 271	17
Parker v. *United States*, 62 F. (2d) 1055	27
Prevette v. *United States*, 68 F. (2d) 112, certiorari denied 292 U. S. 622	31
Proechel v. *United States*, 59 F. (2d) 648, certiorari denied, 287 U. S. 658	29, 30
Roberts v. *United States*, 57 F. (2d) 514	7
Runkle v. *United States*, 42 F. (2d) 804	9

Cases—Continued. Page

Shwab v. *Doyle*, 258 U. S. 529 ... 23
Sorvik v. *United States*, 52 F. (2d) 406 ... 14
Thompson v. *United States*, 65 F. (2d) 897 ... 27
United States v. *Cornell*, 63 F. (2d) 180 ... 7, 13
United States v. *Doublehead*, 70 F. (2d) 91 ... 31
United States v. *Golden*, 34 F. (2d) 367 ... 10
United States v. *Green*, 69 F. (2d) 921 ... 7, 13, 16
United States v. *Hairston*, 55 F. (2d) 825 ... 30
United States v. *Harris*, 66 F. (2d) 71 ... 27
United States v. *Ivey*, 64 F. (2d) 653 ... 27
United States v. *Law*, 299 Fed. 61; 266 U. S. 494 ... 14, 16
United States v. *McCreary*, 61 F. (2d) 804 ... 29
United States v. *Mayfield*, 64 F. (2d) 214 ... 27
United States v. *Rasar*, 45 F. (2d) 545 ... 14
United States v. *Searls*, 49 F. (2d) 224 ... 11
United States v. *Spaulding*, No. 161, Oct. Term, 1934, decided Jan. 7, 1935 ... 30
United States v. *Steadman* (C. C. A. 10th), 73 F. (2d) 695 ... 31
United States v. *Stephens* (C. C. A. 9th), 73 F. (2d) 706 ... 30
United States v. *Thomas*, 53 F. (2d) 192 ... 10, 13, 27, 29
United States v. *Vineyard*, 71 F. (2d) 624, certiorari denied, No. 414, Nov. 5, 1934 ... 16

Statutes:

Section 302 of W. R. I. A. of Oct. 6, 1917, c. 105, 40 Stat. 398, 406 ... 8
Sec. 401, W. R. I. A., 41 Stat. 374 ... 45
Sec. 402, W. R. I. A., 40 Stat. 409 ... 17
Sec. 27, W. W. V. A., 1924, 43 Stat. 615 ... 44
Sec. 19, W. W. V. A., 1924, as amended, 46 Stat. 993 ... 33
Sec. 200, W. W. V. A., 1924, as amended, 43 Stat. 618 ... 10
Sec. 202, W. W. V. A., 1924, as amended, 43 Stat. 618 ... 34, 36

Miscellaneous:

V. A. Regulations Nos. 4, 1115, 3122, 3140, 3205 ... 37, 42
1. Comp. Gen. 31 ... 19
2. Comp. Gen. 99 ... 20
H. Rep. No. 763, 68th Cong., 1st Sess., pp. 3, 12 ... 20
H. Rep. No. 130, 65th Cong., 1st Sess., part 3 ... 18
S. Rep. No. 397, 68th Cong., 1st Sess., pp. 2, 6 ... 20
W. R. Reg. No. 57 ... 38
T. D. No. 20, War Risk ... 32
Regulation & Procedure, U. S. V. B., Part I, p. 55; and Part II, pp. 1241, 1254, 1258 ... 12, 19
Federal Laws Relating to Veterans of Wars of the U. S. (annotated), 72d Cong., 1st Sess., S. Rep. No. 131, p. 132 ... 9
Amrhein's *The Liberalization of the Life Insurance Contract, 1933*, pp. 282-283 ... 25
The Spectator Company, *The Handy Guide to Standard and Special Contracts, 1934* ... 25

In the Supreme Court of the United States

OCTOBER TERM, 1934

No. 342

MADISON L. MILLER, JR., PETITIONER

v.

UNITED STATES OF AMERICA

ON A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The District Court rendered no opinion. The opinion of the Circuit Court of Appeals (R. 22–27) is reported in 71 F. (2d) 361.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered June 8, 1934 (R. 27). The petition for a writ of certiorari was filed September 4, 1934, a motion to proceed *in forma pauperis* was allowed October 15, 1934, and the petition was granted December 3, 1934. The jurisdiction of this Court

is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Where the evidence in a war-risk insurance suit fails to establish the existence of a total permanent disability in fact, is the insured entitled to recover if he can show anatomical or functional losses sufficient to create a presumption of total permanent disability for compensation purposes under the provisions of subdivision 3, Section 202, World War Veterans' Act, as amended?

2. Does the law authorize the issuance of a regulation making the provisions of the statute relating to compensation applicable to insurance and retroactively effective?

3. Did the petitioner adduce substantial evidence of total permanent disability in fact?

STATUTES AND REGULATIONS INVOLVED

These are set forth in the Appendix, *infra*, pp. 32–48.

STATEMENT

The petitioner brought suit on April 5, 1932, in the District Court of the United States for the Middle District of Georgia to recover total permanent-disability benefits under a contract of war-risk term insurance issued to him during his service in the United States Army (R. 1–3). While it was not contended that any premiums had been paid since petitioner's discharge, April 3, 1919 (R.

1–2), it was alleged that the insurance had matured by reason of the petitioner's total permanent disability on October 26, 1918, as a result of injuries sustained in the wreck of a troop train in France (R. 2). The loss by amputation of the right arm and of the practical sight of the left eye were alleged (R. 2), but from the evidence adduced at the trial it appears that the petitioner's eye had been defective since birth (R. 15). This defect in his vision, while permanent, had apparently not disabled him, or even been noticed by him, prior to the time he received the injury which resulted in the loss of his right arm (R. 12, 23, 26). Neither was it mentioned in his application for life insurance in 1919 after his discharge from the service (R. 14).

Before entering the Army the petitioner had received the equivalent of three years of a high-school education and had worked as a practical engineer engaged in surveying (R. 12–13). Except for the loss of his right arm and the defective vision in his left eye, there was no showing made but that his health was generally good, and in 1919 he so represented both in applying to the Government for compensation and in an application for life insurance (R. 14–15, 23).

Since his discharge from the Army, petitioner stated that he had received from the Government an average of about $90.00 per month as compensation, but claimed to have earned by his own efforts only $405.00 (R. 15). He also testified to having

received "about $2,500" as his share of the proceeds of certain lots which he and his brother subdivided and sold (R. 14).

The petitioner testified to having attempted unsuccessfully to pursue several forms of employment, but in some instances the work was of a character incapable of being accomplished by a one-armed man, and he abandoned employment as a salesman on other occasions because he found he had no talent for the work (R. 13–14). He also testified to having abandoned a vocational-training course in advertising offered him by the Government because of ill health while pursuing it (R. 14).

A medical witness, who qualified as an eye specialist, testified that petitioner's vision in his left eye was only about one-tenth of normal, but that if the sight of the right eye should be lost there would be sufficient vision in the left eye to enable the petitioner "to get around." The witness expressed the opinion that the petitioner was "totally disabled" because he had to direct his left hand with his right eye. While testifying that he personally did not know of any gainful occupations that petitioner could follow, the witness indicated that such a statement did not necessarily exclude all occupations, for he admitted that the petitioner "could manage a farm if he knew the farming business" (R. 15–16).

The only other witness for the petitioner testified merely to having witnessed the train wreck and petitioner's injuries therein (R. 16).

Upon the conclusion of the petitioner's evidence the trial court directed a verdict for the United States (R. 17). An appeal was taken to the Circuit Court of Appeals for the Fifth Circuit, in which court the contention was made for the first time that, irrespective of the existence of total permanent disability in fact, recovery should have been allowed under subdivision 3 of Section 202, World War Veterans' Act, as amended (*infra,* p. 34), and pursuant to Veterans' Administration Regulation No. 3140 (*infra,* p. 38), which adopted for insurance awards the provisions of Section 202 that certain anatomical and/or functional losses, among them the permanent loss of the use of one hand and one eye, should be deemed for compensation purposes to be total permanent disability.

The Circuit Court of Appeals held the statutory provision not applicable on the ground that it related solely to compensation, and ruled that Regulation No. 3140 was not binding on the courts as it constituted "a modification or enlargement of the insurance contract" beyond the Congressional authorization (R. 25). It was also held that, "Regulations aside, the evidence did not warrant a finding of total permanent disability", as the petitioner was not totally disabled in fact (R. 25).

ARGUMENT

I

CONGRESS HAS NOT PROVIDED BY STATUTE THAT TOTAL PERMANENT DISABILITY MAY BE PRESUMED FOR WAR-RISK INSURANCE PURPOSES WHERE SUCH CONDITION DOES NOT EXIST IN FACT

By the arrangement and emphasis of petitioner's brief it seems apparent that principal reliance is placed herein upon the contention that, irrespective of the existence of total permanent disability in fact, such a condition is to be presumed, and recovery of insurance disability benefits allowed, if the insured can show functional and/or anatomical losses sufficient to bring his case within the provisions of subdivision 3 of Section 202, World War Veterans' Act, as amended, and the Veterans' Administration regulations making such statutory provisions mandatorily applicable to all insurance awards.

The court below rejected such a contention on the ground that the Congressional authorization for insurance against total permanent disability contemplated that benefits would be payable only in the event that the insured was in fact so disabled.

The decision rendered accords, we believe, with the view indicated by this Court in *Lumbra* v. *United States,* 290 U. S. 551, 558–560, that the statutory phrase "total permanent disability" requires consideration of the circumstances of each case. At the same time it was stated in the *Lumbra* opinion that—

> The various meanings inhering in the phrase make impossible the ascertainment of any fixed rules or formulae uniformly to govern its construction. That which sometimes results in total disability may cause slight inconvenience under other conditions. Some are able to sustain themselves, without serious loss of productive power, against injury or disease sufficient totally to disable others. It cannot be said that injury or disease sufficient merely to prevent one from again doing some work of the kind he had been accustomed to perform constitutes the disability meant by the Act, for such impairment may not lessen or affect his ability to follow other useful, and perchance more lucrative, occupations. Frequently serious physical impairment stimulates to successful effort for the acquisition of productive ability that theretofore remained undeveloped.

Cf. *United States* v. *Green,* 69 F. (2d) 921, 922 (C. C. A. 8th); *United States* v. *Cornell,* 63 F. (2d) 180, 181 (C. C. A. 8th); *Roberts* v. *United States,* 57 F. (2d) 514 (C. C. A. 10th); *Nalbantian* v. *United States,* 54 F. (2d) 63, 65 (C. C. A. 7th), certiorari denied, 285 U. S. 536; *Barksdale* v. *United States,* 46 F. (2d) 762 (C. C. A. 10th).

The contention advanced by the petitioner herein is at variance with several principles expressed in the above quotation. There is urged, for example, the approval of a fixed rule uniformly to govern the determination of total permanent disability in cer-

tain cases. In many cases such a rule would disregard the fact that the insured, while seriously handicapped by injury or disease, could nevertheless follow a substantially gainful occupation. Adopting the phraseology of the court below, the contention of the petitioner (R. 25)—

> * * * if sustained, would cause an insurance policy to mature, not upon total permanent disability, but upon a one-eyed man's losing his leg, or a one-armed man's losing an eye, or the like, regardless of the effect of the loss on his earning capacity.

Petitioner argues that such a result as that described was nevertheless the intention of the Congress. To support this contention he relies primarily on the statutory provision that loss of certain members and/or functions shall constitute total permanent disability for compensation purposes.[1]

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[1] The War Risk Insurance Act of October 6, 1917, contained a provision in Section 302, "That for the loss of both feet or both hands or both eyes, or for becoming totally blind or helplessly and permanently bedridden from causes occurring in the line of duty in the service of the United States, the rate of compensation shall be $100 per month". This provision has been enlarged from time to time so that statutory total permanent disability for compensation purposes is now allowed for "the permanent loss of the use of both feet, or both hands, or both eyes, or of one foot and one hand, or of one foot and one eye, or of one hand and one eye, or the loss of hearing of both ears, or the organic loss of speech, or becoming permanently helpless or permanently bedridden * * *." The enlargements of this provision are contained in the amendatory Acts of

It is therefore urged by him that, since he suffered the amputation of his right arm in October 1918, while his insurance was in force and at that time also had impaired vision of one eye, his case is controlled by the statutory provision which included, among the conditions enumerated, the permanent loss of the use of one hand and one eye.

But the statutory provision relied upon manifestly has no application to insurance. In the World War Veterans' Act and in the other Acts this provision has always been included only in the Article or Title governing compensation. Insurance provisions are, and have been, dealt with under a separate Article or Title and between the two forms of benefits provided there is a fundamental difference which has been clearly pointed out by the Circuit Court of Appeals for the Tenth Circuit in *Runkle* v. *United States*, 42 F. (2d) 804. It was therein said, at page 806:

> Disability under a war risk insurance policy is a different thing than disability under the compensation statutes. Disability under a war risk insurance policy is such "impairment of the mind or body as renders it impossible for the assured to follow continuously any substantially gainful occupa-

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June 25, 1918; August 6, 1919; December 24, 1919; reenacted as Section 202, World War Veterans' Act, June 7, 1924, and amended July 2, 1926. For a complete legislative history of the provisions, see "Federal Laws Relating to Veterans of Wars of the United States" (annotated), 72d Congress, First Session, Senate Report No. 131, p. 132.

> tion." War risk insurance deals with the individual case, and with "any" occupation. Disability under the compensation statute, on the other hand, deals with "average impairments", and with inability to follow a pre-war occupation. Title 38, U. S. C. A., § 477, defines disability ratings for the purposes of compensation as follows: "The ratings shall be based, as far as practicable, upon the average impairments of earning capacity resulting from such injuries in civil occupations similar to the occupation of the injured man at the time of enlistment and not upon the impairment in earning capacity in each individual case, so that there shall be no reduction in the rate of compensation for individual success in overcoming the handicap of an injury."

See also *United States* v. *Golden*, 34 F. (2d) 367, 369 (C. C. A. 10th), and *United States* v. *Thomas*, 53 F. (2d) 192, 195 (C. C. A. 4th).

Congress, having thus provided wholly different standards for the ascertainment of benefit rights between compensation and insurance, cannot be presumed, in the absence of some clear expression warranting it, to have intended that a provision found only in the compensation title should be likewise applicable to insurance.[2] The context and

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[2] The Congressional intendment with respect to excluding provisions of the compensation title from application to insurance claims is especially clear when consideration is given to the presumption of service origin of disabilities contained in Section 200 of the World War Veterans' Act, as amended, 38 U. S. C. 471. In *Brandaw* v. *United States*,

purpose of subdivision 3, Section 202, we submit, is clearly to the contrary. Compensation alone is mentioned and provision is made for "double total permanent disability", which obviously could have no intended application to the insurance authorized.

Furthermore, it seems clear, from reference to subdivision 4 of the same section, that when the term "total permanent disability" is employed in Section 202 there must have been intended a different standard of disability than that applicable to insurance. The first paragraph of subdivision 4 provides that the compensation to be paid a veteran for permanent partial disability "shall be a percentage of the compensation that would be payable for his total and permanent disability equal to the degree of the reduction in earning capacity resulting from the disability * * *." As compensation ratings are required by other provisions of the subdivision to be based upon the average impairment of earning capacity in civil occupations similar to that pursued by the veteran

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35 F. (2d) 181 (C. C. A. 9th), and in other cases this presumption was held applicable to war-risk insurance litigation. These decisions were brought to the attention of Congress and an amendment was made by the Act of July 3, 1930, which made it clear that Congress did not intend the compensation presumption to be held applicable to war-risk insurance. A full discussion of the legislation in question will be found in *United States* v. *Searls*, 49 F. (2d) 224 (C. C. A. 4th). See also *Meyer* v. *United States*, 65 F. (2d) 509 (C. C. A. 5th); *LeBlanc* v. *United States*, 65 F. (2d) 514 (C. C. A. 5th).

prior to enlistment, it is obvious that the base for partial ratings, namely, total permanent disability, must of necessity be governed by the same standard, for the total of a measure cannot be of different character than the gradations thereof.

It has been seen that Congress intended compensation to be payable irrespective of whether or not the veteran's post-war ability to earn had been affected. This, manifestly, is not the purpose of the total permanent disability provision of insurance.[3]

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[3] Judge Julian W. Mack, who was the principal author of the War Risk Insurance Act of October 6, 1917, made clear the distinction between compensation and insurance in an explanation which is published in "Regulations and Procedure, United States Veterans' Bureau" Part II, pp. 1241, 1254, and 1258. This explanation, it was stated by Director De Lanoy, had "the full approval of the Bureau of War Risk Insurance."

Discussing the compensation features of the Act Judge Mack said (p. 1254): "* * * it is expressly provided in this bill that the compensation which the Government gives him, let us say for the loss of his legs, is not going to be taken away from him because he has attained an even higher economic position than he had before the war. The compensation will be continued as long as the physical disability continues, regardless of the economic recuperation."

Later, discussing the insurance provisions of the Act, Judge Mack said (p. 1258): "Then, another provision that the Government generously added: While it based the premiums upon these extremely low term rates, it added this provision that not only on a man's death should the policy mature, but also on his becoming totally and permanently disabled. *This has nothing at all to do with the compensation provision.*" (Italics ours.)

The basic regulation, Treasury Decision 20, which, with minor and immaterial changes, has governed the ascertainment of total permanent disability for insurance purposes since its promulgation on March 9, 1918, is solely concerned with the matter of ability to follow any gainful occupation at the time when the incidence of the disability is claimed. Cf. *United States* v. *Thomas*, 53 F. (2d) 192, 195 (C. C. A. 4th).

This regulation in no wise can be said to embrace such a rule for determining total permanent disability as that provided in subdivision 3 of Section 202, *infra*, p. 34, for, as has been pointed out, a claimant entitled to the total permanent compensation benefits under that section might well be capable of pursuing a substantially gainful occupation and thus would not be within the provisions of Treasury Decision 20. Petitioner's argument that the regulation amounts to a long-standing administrative holding that total permanent disability is to be similarly construed for compensation and insurance purposes (Br. 12–13) is thus seen to be without merit, particularly as the regulation has been held not necessarily definitive of the statutory authority (See *Lumbra* v. *United States*, *supra*, and *United States* v. *Green*, *supra*, p. 921), although its general provisions have been frequently approved. See *United States* v. *Cornell*, *supra*, p. 181.

Furthermore, the Veterans' Administration has expressly ruled by Regulation 3205, *infra*, p. 38,

that because of the "distinctly dissimilar standards" governing compensation and insurance awards a decision as to one benefit is not determinative of the other.

Nor do the few cases cited by petitioner in which passing references have been made to Section 202 lend any authoritative support to the contention herein advanced that certain disabilities are conclusively to be presumed totally permanently disabling for, in each instance, the opinion expressly recognizes that total permanent disability is generally to be determined by the facts in the particular case and in no case cited did the court have before it for decision the question as presented herein. See *United States* v. *Rasar*, 45 F. (2d) 545, 547–548 (C. C. A. 9th); *Sorvik* v. *United States*, 52 F. (2d) 406, 411 (C. C. A. 9th); and *United States* v. *Law*, 299 Fed. 61, 64 (reversed on a jurisdictional question, 266 U. S. 494).

See also *Demeter* v. *United States*, 66 F. (2d) 188, 189 (App. D. C.), where it was said, "* * * it is settled law that total disability for purposes of compensation differs greatly from total disability for insurance * * *."

We believe that the foregoing conclusively disposes of any contention that Congress intended that the compensation provisions of subdivision 3, Section 202, were to govern insurance awards. If, then, it be concluded that the provisions of Section 202 are not to be held mandatorily determinative

of total permanent disability under insurance contracts, the question arises whether they can be so made applicable by administrative regulation.

II

NO CONGRESSIONAL INTENTION CAN BE IMPUTED TO AUTHORIZE ENLARGEMENT OF THE GOVERNMENT'S LIABILITY FOR DISABILITY INSURANCE BY A REGULATION PRESUMING TOTAL PERMANENT DISABILITY WHEN SUCH DISABILITY MAY NOT EXIST IN FACT

In the various Acts which have authorized war risk and Government insurance no attempt has been made to define its scope other than to provide that insurance should be granted against "death or total permanent disability." Authority was conferred upon the official charged with the administration of the law to make regulations not inconsistent with the purposes of the Act and to determine upon and publish the full and exact terms and conditions for the contracts of insurance made.

As the foregoing constitutes the only express statutory pronouncement respecting the character of the insurance authorized, the Congressional intendment concerning the liability to be assumed by the Government for the disability-insurance features must of necessity be ascertained from general principles inherent in the legislation.

The first inquiry naturally turns to the character of the disability for which Congress intended the insurance protection. Because provision had been made through the compensation features of the

legislation for the payment of benefits for disabilities of service origin, and it had been specifically directed that such benefits were to be payable irrespective of economic recuperation (which latter provision was not made applicable to the insurance authorized), it seems clear that Congress intended the disability insurance to provide indemnity solely against vocational inability rather than to duplicate the indemnifying provisions of the compensation benefits. This view finds support in the numerous court decisions which have held that where the insured has been able to follow a gainful occupation for a substantial period subsequent to the time of the alleged disability, it cannot be said that the requisite condition of the insurance has been met, even though the insured was suffering from a disability which might make it impossible for others to perform the work which he had proved himself capable of accomplishing. Cf. *Lumbra* v. *United States, supra; United States* v. *Green, supra* (p. 922); *Barksdale* v. *United States, supra* (p. 764); and *United States* v. *Law, supra* (p. 64).

In *United States* v. *Vineyard,* 71 F. (2d) 624, certiorari denied, No. 414, denied Nov. 5, 1934, the Circuit Court of Appeals for the Fifth Circuit, discussing certain previous decisions rendered, stated:

> We undertook in those cases to point out that disability insurance of this kind is in effect unemployment insurance, when that unemployment is the result of the contin-

> gency insured against—total and permanent disability. We held that such contracts are and must be liberally construed to give effect to their paramount purpose of supplying, to the extent of the policy payments, the living which the disability insured against has prevented the insured from earning. Under such a contract one may not be said to be totally disabled when the proof shows that without serious injury or danger to his health and life he has in fact for a long period of years made his living by working.

If it is thus to be assumed that the disability insurance was intended as stated in the decision quoted, to be unemployment insurance where the vocational incapacity flows from disability, it would necessarily follow that any regulation which would enlarge the liability of the Government beyond the character of insurance intended would be inconsistent with the statutory authority. Cf. *Nordberg* v. *United States,* 51 F. (2d) 271, 273 (D. C. Mont.).

We think it indisputable that Congress did not intend to vest in any administrative official the right to confer additional benefits or to enlarge those previously authorized, especially when it is considered that the disability provision of the insurance contract was wholly gratuitous in nature as premiums were required to be calculated only against mortality hazards. (See Section 402, 40 Stat. 409.) How costly has been the liability thus assumed by the Government is apparent from the

fact that the disbursements to June 30, 1933, for term and automatic insurance exceeded premium receipts by $1,166,939,057, a deficit largely attributable to the gratuitous disability features of the insurance. See Footnote 2 of the opinion in *Lynch* v. *United States,* 292 U. S. 571.

Presumably it was in recognition of the tremendous potential liability assumed by the Government in war-risk insurance and with the intention to reserve for Congressional determination alone any enlargement of such liability that the House Committee having charge of the original War Risk Insurance Act struck out the clause originally contained in Section 402 which would have provided that "rights and privileges not provided for may be granted from time to time as may be prescribed by regulations." See H. Rep. No. 130, 65th Cong., 1st Sess., part 3.

Congress has from time to time provided for the enlargement of the privileges granted and accorded new benefits (see *Lynch* v. *United States, supra,* particularly Footnote 4), but in each instance specifically conferred authority for the administration of the new benefits authorized.

As has previously been seen, the basic regulation, Treasury Decision 20, fully accords with the contention herein advanced that the disability insurance was of intended application solely to cases of individual vocational incapacity.

Generally speaking, the regulations which have been promulgated for the procedural application

of the principles incorporated in Treasury Decision 20 have been consistent with the statutory intendment as herein discussed, but in War Risk Regulation 57, effective November 26, 1920, these principles were departed from when attempt was made to provide for presumptive total permanent disability in both compensation and insurance cases where the claimant had been hospitalized for a period of six months or had been found temporarily totally disabled for such a period. (See Par. B IV (c) 1. Regulations and Procedure United States Veterans' Bureau, Part I, p. 55.)

This provision of the regulation was declared invalid by the Comptroller General of the United States, 1 Comp. Gen. 31. Discussing the regulation in question, the decision said (p. 32):

> Any general regulation of the matter, however, must under the terms of the statute be not inconsistent with its provisions, so that in my opinion any such regulation which undertakes, for instance, without specific authority of law, to establish a general rule for rating total permanent disability upon mere lapse of time and without regard to whether the applicant was in fact totally and permanently disabled, is contrary to law and therefore of no effect as a general regulation * * *.

The decision further said (p. 32):

> As regards the application of these regulations to the payment of insurance the situation is not materially different. The

> insurance provided for by Section 400 of the act of October 6, 1917, 40 Stat. 409, is payable only in case of death or "total permanent disability", and may not lawfully be paid for any disabled condition which is not in fact permanently total according to the medical opinion and award of the bureau. As in the case of compensation the director is authorized and empowered by law to decide when a condition of permanent total disability exists. The same legal restriction upon his power to make general regulations which applies to compensation applies with equal force to insurance, and I cannot approve a regulation which undertakes to establish conclusively by lapse of time a condition of permanent disability which can be determined to exist only by competent medical opinion based upon the facts of any given case.

This decision was reaffirmed by the Comptroller General in 2 Comp. Gen. 99.

That the Congress concurred in the Comptroller General's ruling as to the illegality of such a regulation, seems implicit in the fact that Section 27 of the World War Veterans' Act of June 7, 1924, validated payments made under awards disapproved by the ruling of the Comptroller General, but did not provide that any future payments might be made, and this action was taken upon submission by the Bureau to Congress of the facts relating to the regulation in question. Reference to the situation was contained in H. Rep. No. 763,

68th Cong., 1st Sess., pp. 3, 12; and S. Rep. No. 397, 68th Cong., 1st Sess., pp. 2, 6.

It may be suggested in that connection that, had Congress not concurred in the ruling of the Comptroller General, it could very well have provided by the same amendatory legislation that the Director should be empowered to promulgate such a regulation as was held invalid; and the failure of Congress so to do is to be taken as evidencing a contrary intent. *Girard Trust Co.* v. *United States*, 270 U. S. 163, 169.

The petitioner has sought to make a point of the fact that in both War Risk Regulation 57 and Veterans' Bureau Regulation 4, *infra*, provision was made that insurance awards might conform to the procedure outlined for compensation claims and take into consideration the specific disabilities which, for compensation purposes, would constitute statutory total permanent disability. Because these regulations were in effect from November 1920 until Regulation 3140 was promulgated in May 1930 he contends that Congressional sanction for the latter challenged regulation may be implied (Br. p. 18).

But it is overlooked by petitioner that in both War Risk Regulation 57 and Veterans' Bureau Regulation 4 no mandatory application of the presumptive compensation provision was required in insurance cases. Both regulations employed the word "shall" in the section which provided that total permanent disability should be presumed in

compensation claims where the disabilities enumerated by the statute were present, and we believe it to be highly significant that the word "may" was used in that portion of the regulations where application was suggested for insurance awards. It is also to be noted that the insurance paragraph of the regulation was qualified by the phrase "in a properly supported claim", which may well have been intended to require, in addition to the existence of the disabilities enumerated by the statute, that showing should be made of their vocationally disabling character.

With the promulgation of Regulation 3140 in May 1930, the permissive language previously applicable to the adjudication of insurance claims was changed to a mandatory provision, but it may be questioned whether, even in the changed form, the regulation was not intended to be for administrative application to existing contracts only. Support for such a view may be found in the decision of this Court in *Meadows* v. *United States*, 281 U. S. 271. It was therein held that a statutory provision for the reinstatement of lapsed insurance contracts as contained in the Act of August 9, 1921, 42 Stat. 147, 156, 157, and carried into the Act of June 7, 1924, 43 Stat. 624, 625, was not an obligation of a contract which had previously expired.

A claim to the benefit of reinstatement provided for in the statute was regarded as one not under the contract of insurance and therefore not permissible of litigation under the terms of Section 19,

46 Stat. 993, World War Veterans' Act of 1924, as amended (38 U. S. C. 445). In the instant case the contract of insurance lapsed for premium nonpayment in May 1919, 11 years before promulgation of the regulation which petitioner now seeks to have read into the expired contract. As petitioner apparently views his case, retrospective application of the regulation is indispensable to breathe life into an otherwise defunct contract.

But we find no statutory authority, express or implied, warranting the revival by regulation of contracts of insurance otherwise lapsed. In instances where Congress has provided for revival of lapsed contracts specific authority therefor was given (Cf. Sections 304, 305, 308, and 309, World War Veterans' Act, as amended) and the principle of *inclusio unius est exclusio alterius* would seem applicable.

Even if there can be read into the provision of Section 401 of the original War Risk Insurance Act, or any of the amendments thereto, the intention to authorize enlargement by regulation of contract insurance rights, nothing in that section or the amendments seems other than prospective in character. This Court has frequently ruled that such effect is to be given in statutory construction unless the language is express to the contrary, or there is a necessary implication to that effect. See *Fullerton Co.* v. *Northern Pacific,* 266 U. S. 435, 437; *Harvey* v. *Tyler,* 2 Wall. 328, 347; *Shwab* v. *Doyle,* 258 U. S. 529, 534.

110468—35——4

We believe it manifest that neither by express nor implied Congressional intention can there be found warrant for a revival by regulation of lapsed insurance contracts in the manner sought herein. All statutory provisions relating to insurance appear of prospective application only except where Congress has expressly provided for revival of insurance as in the sections cited above. Moreover, to assume that lapsed contracts may be subsequently revived by regulatory provisions promulgated many years after the expiration of insurance would lead to results both inequitable and clearly beyond Congressional intendment.

If an insured early litigated a claim, which under the then existing contract could not be maintained, an adverse judgment would either deprive him of rights subsequently accorded by regulation to another insured, whose claim might originally be identical, or would possibly result in extending litigation rights beyond the period which Congress by the amendment of Section 19 indicated it desired limited. The latter eventuality would of course arise only if Section 19 were so construed as to hold that the promulgation of the regulation was an accrual of the right from which the six-year statute of limitations would run. We doubt that any such construction would be sustained, for in addition to other reasons which could be urged in opposition, it would sanction litigation indefinitely. But either eventuality would seem clearly opposed to Congressional intention.

If we are correct in the view thus suggested, that no authority exists to confer rights by regulation in lapsed contracts which would have the effect of breathing life into defunct policies, it would not appear essential to the determination of this case to consider provisions similar to Regulation 3140, which had been made part of Government insurance policies (converted insurance) at the time of the issuance or while the insurance was in force. Similarly there may be excluded from consideration the application of both Regulations 3140 and 3122 to war-risk insurance contracts which were not lapsed when the regulations were promulgated.

Only one other contention of petitioner merits discussion. Presumably with the purpose of urging that the Director was empowered to make the provisions of war-risk and Government (converted) insurance conform to standards generally prevailing in policies issued by private companies, he asks this Court to take judicial notice of his allegation that such policies "quite generally carry a provision" which he asserts is identical with Regulation 3140 (Br. p. 14).

While it is true that some companies do include in their policies a stipulation that "the entire and irrevocable loss of the sight of both eyes or the use of both hands, or both feet, or one hand and one foot, will be considered total disability" (See Amrhein's The Liberalization of the Life Insurance Contract, 1933, pp. 282–283; and Cf. The Handy Guide to Standard and Special Contracts,

1934, The Spectator Company) this provision is not universal and no policy that has come to our attention presumes that such disability would arise if the loss is of a hand and an eye.

For reasons previously discussed such contention has no support in the terms or purpose of the Congressional authorization, particularly as the Government disability insurance was gratuitous in nature while private companies may make premium charges conform to the degree of liberality of the disability provision inserted in the policy.

The fact that some insurance contracts issued by private companies contain such provisions as above set out does not authorize the Director to change the terms of the insurance contract authorized by the Act of Congress.

In view of the foregoing we respectfully submit that Congress has not expressly, or by implication, authorized the enlargement by regulation of the Government's liability for disability insurance to include claims where total permanent disability does not in fact exist. Especially is it contended that administrative authority was not conferred retroactively to create justiciable rights in defunct contracts of more liberal character than authorized by Congress.

There remains then only the question whether or not a judgment was properly entered against petitioner upon the evidence adduced by him in the trial court.

III

A VERDICT WAS PROPERLY DIRECTED FOR THE RESPONDENT

The petitioner lost his right arm while his insurance was in force (R. 12). His one medical witness, Dr. Pennington, who had examined him in September 1932, testified that petitioner had one-tenth vision in the left eye, defective from birth (R. 15).

The insurance lapsed May 31, 1919 (R. 11). During that year the petitioner wrote the Government that his physical condition was good except for the loss of the arm, meaning thereby, he explained at the trial, that his general health was good (R. 14). The only other evidence relating to the petitioner's health is that it "got bad" during a course of vocational training furnished by the Government and discontinued by the insured (R. 14).

It has been frequently ruled in war-risk litigation, and appears well settled, that the loss of a limb does not establish a claim of total permanent disability. *Bridges* v. *United States,* 67 F. (2d) 320 (C. C. A. 5th); *United States* v. *Thomas,* 53 F. (2d) 192 (C. C. A. 4th); *Thompson* v. *United States,* 65 F. (2d) 897 (C. C. A. 8th); *United States* v. *Ivey,* 64 F. (2d) 653 (C. C. A. 10th); *United States* v. *Harris,* 66 F. (2d) 71 (C. C. A. 4th); *United States* v. *Mayfield,* 64 F. (2d) 214 (C. C. A. 10th); *Parker* v. *United States,* 62 F. (2d) 1055

(C. C. A. 4th). In several of the cases cited above the addition to the loss of a limb other disabilities apparently more disabling than the defective vision of petitioner's left eye were held insufficient to warrant a finding of total permanent disability.

When the petitioner applied for life insurance (R. 14) he did not in response to a question relating thereto say anything about his left eye for the reason, he explained at the trial, that he did not think it would affect the risk (R. 14–15). Nor did he, in testifying concerning his post-war employment (R. 13–14), mention any difficulties of vision.

Before the war the petitioner was a surveyor or "practical engineer" with three years of high-school education (R. 13–14). He testified that after service his loss of an arm made it impracticable for him to retain employment with a packing concern in lifting heavy quarters of meat or as a telephone order clerk (R. 13) or with a wholesale house in handling bolts and heavy ironware or in the rug department (R. 13). Also he was unable with one hand to demonstrate sections of tires while employed as salesman for a rubber goods company (R. 14).

He worked for two other concerns as a salesman, but without success (R. 14). It does not appear that the loss of his arm handicapped him in either job, as he testified that the reason he failed was that he "did not have any talent for it" (R. 14).

A job as "hazard inspector", for which his disabilities are not shown to have handicapped him, did not last more than a month (R. 13).

The petitioner testified that since April 1919 he has received from the Government an average monthly compensation of $90.00 (R. 15); that he received $2,500.00 as his share when he and his brother subdivided an inherited farm and sold lots (R. 14); that he had diligently but unsuccessfully sought other employment, but since April 1919 had earned by his own efforts only $405.00 (R. 15).

The record of work unsuccessfully attempted fully justifies an inference, required also by the nature of his disability, that petitioner has been unable to handle heavy materials or work as a telephone order clerk. But there is no substantial evidence that he has sought employment and been unable to engage in the many occupations followed successfully by men who have lost an arm. It has been held that disability precluding merely the pursuit of a particular type of work does not constitute total permanent disability within the meaning of the War Risk Insurance Act and the contract of insurance (*Lumbra* v. *United States,* 290 U. S. 551; see also *United States* v. *Thomas,* 53 F. (2d) 192 (C. C. A. 4th); *Proechel* v. *United States,* 59 F. (2d) 648 (C. C. A. 8th), certiorari denied, 287 U. S. 658), and that "The policy is not against nonemployment" *United States* v. *McCreary,* 61

F. (2d) 804, 808 (C. C. A. 9th). Cf. *Hanagan* v. *United States,* 57 F. (2d) 860 (C. C. A. 7th); *United States* v. *Hairston,* 55 F. (2d) 825 (C. C. A. 8th).

The subdivision and sale of his father's farm indicates an occupation adapted to the petitioner's early experience and present disability. Further, the petitioner has not shown a lack of mental capacity or opportunity to acquire any training necessary to the pursuit of occupations especially adapted to his disabilities, and the record discloses that vocational training was furnished by the Government and discontinued by the petitioner because of bad health (R. 14), presumably temporary, since it is not mentioned in any other connection. Cf. *Proechel* v. *United States, supra.*

Dr. Pennington, petitioner's single medical witness, was an eye specialist whose factual testimony was limited to the condition of the petitioner's left eye, which he had examined in September 1932 (R. 15–16). He testified that petitioner was more handicapped by the loss of his right arm because of the defective vision of the left eye as, in guiding the left arm, he had to turn and look at an angle with his right eye, and he expressed the opinion that petitioner was totally disabled although "he could manage a farm" (R. 15). Such opinion testimony has been held incompetent and without weight. *United States* v. *Spaulding,* No. 161, October Term, 1934, decided January 7, 1935;

United States v. *Stephens* (C. C. A. 9th), 73 F. (2d) 695; *United States* v. *Steadman* (C. C. A. 10th); *Prevette* v. *United States,* 68 F. (2d) 112 (C. C. A. 4th), certiorari denied, 292 U. S. 622; *Hamilton* v. *United States,* 73 F. (2d) 357 (C. C. A. 5th); *United States* v. *Doublehead,* 70 F. (2d) 91 (C. C. A. 10th).

The claim here asserted was filed in the Veterans' Administration June 5, 1931 (R. 2). The nonassertion of claim for more than twelve years after the expiration of the contract appears particularly significant when it is considered that the disability was nonprogressive, the petitioner received compensation therefor (R. 15), was awarded vocational training (R. 14), and sought renewed insurance protection (R. 14–15).

CONCLUSION

For the reasons stated, it is respectfully submitted that the judgment below should be affirmed.

J. CRAWFORD BIGGS,
Solicitor General.

WILL G. BEARDSLEE,
Director, Bureau of War Risk Litigation.

WILBUR C. PICKETT,
RANDOLPH C. SHAW,
Special Assistants to the Attorney General.

JANUARY 1935.

APPENDIX

PERTINENT STATUTES AND REGULATIONS

The contract sued upon was issued pursuant to the provisions of the War Risk Insurance Act and insured against death or permanent and total disability (40 Stat. 409).

Section 13 of the War Risk Insurance Act, 40 Stat. 555, provided that the Director of the Bureau of War Risk Insurance—

> * * * shall administer, execute, and enforce the provisions of this Act, and for that purpose have full power and authority to make rules and regulations not inconsistent with the provisions of this Act, necessary or appropriate to carry out its purposes, * * *

Pursuant to this authority there was promulgated March 9, 1918, Treasury Decision, No. 20, reading:

> Any impairment of mind or body which renders it impossible for the disabled person to follow continuously any substantially gainful occupation shall be deemed, in Articles III and IV, to be total disability.
>
> Total disability shall be deemed to be permanent whenever it is founded upon conditions which render it reasonably certain that it will continue throughout the life of the person suffering from it. Whenever it shall be established that any person to whom any installment of insurance has been

paid, as provided in Article IV on the ground that the insured has become totally and permanently disabled, has recovered the ability to continuously follow any substantially gainful occupation, the payment of installments of insurance shall be discontinued forthwith, and no further installments thereof shall be paid so long as such recovered ability shall continue.

Section 19 of the World War Veterans' Act of 1924, as amended (46 Stat. 993), Section 445 of Title 38, U. S. C. A., insofar as herein relevant, provides as follows:

> In the event of disagreement as to claim, including claim for refund of premiums, under a contract of insurance between the bureau and any person or persons claiming thereunder, an action on the claim may be brought against the United States either in the Supreme Court of the District of Columbia or in the district court of the United States in and for the district in which such persons or any of them resides, and jurisdiction is hereby conferred upon such courts to hear and determine all such controversies. * * *
>
> No suit on yearly renewable term insurance shall be allowed under this section unless the same shall have been brought within six years after the right accrued for which the claim is made or within one year after the date of approval of this amendatory Act, whichever is the later date, and no suit on United States Government life (converted) insurance shall be allowed under this section unless the same shall have been brought within six years after the right accrued for which the claim is made: *Provided*, That for the purposes of this section it shall be

deemed that the right accrued on the happening of the contingency on which the claim is founded: *Provided further,* That this limitation is suspended for the period elapsing between the filing in the bureau of the claim sued upon and the denial of said claim by the director. Infants, insane persons, or persons under other legal disability, or persons rated as incompetent or insane by the bureau shall have three years in which to bring suit after the removal of their disabilities.

Subdivision 3 of Section 202 of Title II (Compensation and Treatment), World War Veterans' Act, 1924, as amended (43 Stat. 618) (38 U. S. C. 473, 478, 479), provides that:

If and while the disability is rated as total and permanent, the rate of compensation shall be $100 per month: *Provided, however,* That the permanent loss of the use of both feet, or both hands, or of both eyes, or of one foot and one hand, or of one foot and one eye, or of one hand and one eye, or the loss of hearing of both ears, or the organic loss of speech, or becoming permanently helpless or permanently bed-ridden, shall be deemed to be total permanent disability: *Provided further,* That the compensation for the loss of the use of both eyes shall be $150 per month, and that compensation for the loss of the use of both eyes and one or more limbs shall be $200 per month: *Provided further,* That for double total permanent disability the rate of compensation shall be $200 per month.

That any ex-service man shown to have a tuberculous disease of compensable degree, and who has been hospitalized for a period of one year, and who, in the judgment of the director will not reach a condition of arrest

by further hospitalization, and whose discharge from hospitalization will not be prejudicial to the beneficiary or his family, and who is not, in the judgment of the director, feasible for training, shall, upon his request, be discharged from hospitalization and rated as temporarily totally disabled, said rating to continue for the period of three years: *Provided, however,* That nothing in this subdivision shall deny the beneficiary the right, upon presentation of satisfactory evidence, to be adjudged to be permanently and totally disabled: *Provided further,* That in addition to the compensation above provided, the injured person shall be furnished by the United States such reasonable governmental, medical, surgical, and hospital services, including payment of court costs and other expenses incident to proceedings heretofore or hereafter taken for commitment of mentally incompetent persons to hospitals for care and treatment of the insane, and shall be furnished with such supplies, including wheel chairs, artificial limbs, trusses, and similar appliances, as the director may determine to be useful and reasonably necessary, which wheel chairs, artificial limbs, trusses, and similar appliances may be procured by the bureau in such manner, either by purchase or manufacture, as the director may determine to be advantageous and reasonably necessary: *Provided,* That nothing in this Act shall be construed to affect the necessary military control over any member of the Military or Naval Establishments before he shall have been discharged from the military or naval service: *Provided further,* That where any person entitled to the benefits of this paragraph has heretofore been hospitalized in a State institution, the United

States Veterans' Bureau is hereby authorized to reimburse such person, or his estate, where payment has been made to the State out of the funds of such person, or to reimburse the State or any subdivision thereof where no payment has been made for the reasonable cost of such services from the date of admission.

There shall be paid to any person who suffered the loss of the use of a creative organ or one or more feet or hands as the result of an injury received in the active service in line of duty between April 6, 1917, and November 11, 1918, compensation of $25 per month, independent of any other compensation which may be payable under this Act: *Provided, however,* That if such injury was incurred while the veteran was serving with the United States military forces in Russia, the dates herein stated shall extend from April 6, 1917, to April 1, 1920.

Subdivision 4 of Section 202 of Title II (Compensation and Treatment), World War Veterans' Act, 1924, as amended (43 Stat. 618; 38 U. S. C. 474), provides as follows:

If and while the disability is rated as partial and permanent, the monthly compensation shall be a percentage of the compensation that would be payable for his total and permanent disability equal to the degree of the reduction in earning capacity resulting from the disability, but no compensation shall be payable for a reduction in earning capacity rated at less than 10 per centum.

A schedule of ratings of reductions in earning capacity from injuries or combinations of injuries shall be adopted and applied by the bureau. Ratings may be as high as 100 per centum. The ratings shall be

based, as far as practicable, upon the average impairments of earning capacity resulting from such injuries in civil occupations similar to the occupation of the injured man at the time of enlistment and not upon the impairment in earning capacity in each individual case, so that there shall be no reduction in the rate of compensation for individual success in overcoming the handicap of an injury. The bureau in adopting the schedule of ratings of reduction in earning capacity shall consider the impairment in ability to secure employment which results from such injuries. The bureau shall from time to time readjust this schedule of ratings whenever actual experience shall show that it is unjust to the disabled veteran.

Veterans' Administration Regulation No. 1115 (effective March 2, 1931) provides, in part, as follows:

> A rating of permanent and total disability for insurance purposes will have no effect on compensation, and vice versa.

Veterans' Administration Regulations Nos. 3122, 3140, 3205 provide as follows:

> 3122. Without prejudice to any other cause of disability, the permanent loss of the use of both feet, or both hands, or both eyes, or of one foot and one hand, or of one foot and one eye, or of one hand and one eye, or the loss of hearing of both ears, or the organic loss of speech, or becoming permanently helpless or permanently bed-ridden, shall be deemed to be total permanent disability under United States Government life insurance; and monthly installments of insurance for any of these specifically enumerated cases of total permanent disability

shall accrue from the date of such total permanent disability, and any premiums paid after the date of such total permanent disability shall be refunded without interest.

* * * * *

3140. Without prejudice to any other cause of disability, the permanent loss of the use of both feet, or both hands, or both eyes, or of one foot and one hand, or of one foot and one eye, or of one hand and one eye, or the loss of hearing of both ears, or the organic loss of speech, or becoming permanently helpless or permanently bed-ridden, shall be deemed to be total permanent disability under yearly renewable term insurance. Monthly installments of insurance or any of these specifically enumerated causes of total permanent disability shall accrue from the date of such total permanent disability, and any premiums paid after the date of such total permanent disability shall be refunded without interest.

* * * * *

3205. Since decisions of the insurance claims council determining the existence or nonexistence of total and permanent disability for insurance purposes and decisions of rating agencies determining the existence or the nonexistence of total and permanent disability for compensation or disability allowance purposes are based upon distinctly dissimilar standards, it follows that the former cannot be determinative for compensatiton or disability allowance purposes and the latter cannot be determinative for insurance purposes. (November 1, 1931.)

War Risk Regulation No. 57:

NOVEMBER 26, 1920.

By virtue of the authority conferred in section 13 of the war risk insurance act, the

following regulation, effective this date, is issued relative to the effective date of original awards, revised awards, and reawards of disability compensation other than total permanent disability awards, and to the procedure in making, and rules for determining, total permanent disability awards of compensation and insurance, and the effective dates thereof.

A. Effective Date of Compensation Disability Awards Other than Total Permanent Disability Awards.

* * * * *

B. Total Permanent Disability Awards for Compensation and Insurance Purposes.

* * * * *

III. The procedure in making total permanent disability ratings for purposes of insurance, or compensation, or both, shall be as follows:

(a) All cases which involve the making of a total permanent disability rating or the termination or reduction of a total permanent disability rating shall be acted upon by the medical board of review and also by the compensation and insurance claims division board of appeals, and subject to the provisions of Bulletin No. 63–C (Bureau of War Risk Insurance), or any amendments thereto.

* * * * *

IV. For compensation purposes a disability from an injury or disease shall be rated as total and permanent under any of the following conditions:

(a) When a statutory total permanent disability entitles a person to such rating, viz, " Loss of both feet or both hands or the sight of both eyes, or the loss of one foot and one hand, or one foot and the sight of one

eye, or one hand and the sight of one eye, or becoming helpless and permanently bedridden."

(b) When from the evidence submitted it is determined that a person has suffered an impairment of mind or body of a degree which would render the average man incapable of following continuously any substantially gainful occupation and it furthermore appears reasonably certain that such degree of disability will continue throughout the life of the disabled person.

(c) When a presumption of total permanent disability is established under the following conditions:

1. Where the disabled person is on the date of the issuance of this regulation, or hereafter shall be, either an inmate of a hospital or asylum during a continuous period of six months or more; or on the date of the issuance of this regulation is, or hereafter shall be, rated as totally disabled or totally and temporarily disabled for a continuous period of six months or more, and be unable to follow continuously any substantially gainful occupation during such six months; and in addition at the time of the medical examination hereinafter prescribed shall be found then to be in such physical or mental condition as to require further hospitalization or otherwise unable to follow continuously any substantially gainful occupation.

2. Before the disabled person shall be rated totally and permanently disabled under the preceding paragraph, a medical examination shall be conducted for the purpose of ascertaining his or her true physical and mental condition, and in addition all facts as to his or her ability to engage con-

tinuously in a substantially gainful occupation shall be procured.

3. While the disabled person is an inmate of a hospital or asylum, he or she shall be deemed during such period to be temporarily totally disabled and unable to follow continuously any substantially gainful occupation, unless and until his or her disability rating is made permanent and total under the conditions of this regulation.

V. All persons rated totally and permanently disabled shall be medically examined from time to time, but at least once every six months from the date of such rating for the purpose of determining whether or not the rating of total permanent disability should be continued or be modified, unless it is clearly shown that such examinations are wholly unnecessary.

VI. The effective dates of total permanent disability ratings and awards thereon made in accordance with the provisions of Paragraph IV shall be as follows: For the purpose of increasing compensation, total permanent disability awards may be made retroactive to the date from which the disabled person shall have been unable to follow continuously any substantially gainful occupation, and was an inmate of a hospital or asylum, or rated as totally disabled or temporarily and totally disabled, but not more than one year anterior to the date of claim therefor, or, in case of an original award of compensation, the total permanent disability award may be made retroactive to the date from which the disabled person was unable to follow continuously any substantially gainful occupation, and was an inmate of a hospital or asylum, or rated as totally disabled, or temporarily and totally

disabled, but not more than two years anterior to the date of claim therefor.

VII. Upon a properly supported claim, awards of total permanent disability for yearly renewable term insurance purposes and for automatic insurance purposes may be made in accordance with provisions of Paragraph IV above. Such awards may be made retroactive to the date of the commencement of such total permanent disability if the case falls within the provisions of subparagraphs (a) or (b) of Paragraph IV above, or to the date of the commencement of the period during which the person is presumed to be permanently and totally disabled if the case falls within subparagraph (c) of Paragraph IV above.

Awards of total permanent disability under the contract of converted insurance shall be governed by the terms and conditions of the converted policy.

* * * * *

Veterans' Bureau Regulation No. 4:

SEPTEMBER 12, 1921.

A. Effective Date of Compensation Disability Awards Other Than Total Permanent Disability Awards.

* * * * *

B. Total Permanent Disability Awards for Compensation and Insurance Purposes.

III. The procedure in making total permanent disability ratings for purposes of insurance, or compensation, or both, shall be as follows:

(a) All cases which involve the making of a total permanent disability rating or the termination or reduction of a total permanent disability rating shall be acted upon by the medical board of review and also by the

claims division board of appeals, subject to the provisions of bulletin No. 63–C (Bureau of War Risk Insurance), or any amendments thereto.

IV. For compensation purposes a disability from an injury or disease shall be rated as total and permanent under any of the following conditions:

(a) When a statutory total permanent disability entitles a person to such rating, viz, "Loss of both feet or both hands or the sight of both eyes, or the loss of one foot and one hand, or one foot and the sight of one eye, or one hand and the sight of one eye, or becoming helpless and permanently bedridden."

(b) When from the evidence submitted it is determined that a person has suffered an impairment of mind or body of a degree which would render the average man incapable of following continuously a substantially gainful occupation, and it furthermore appears reasonably certain that such degree of disability will continue throughout the life of the disabled person.

V. All persons rated totally and permanently disabled shall be medically examined from time to time, but at least once every six months from the date of such rating for the purpose of determining whether or not the rating of total permanent disability should be continued or be modified, unless it is clearly shown that such examinations are wholly unnecessary.

VI. The effective dates of total permanent disability ratings and awards thereon made in accordance with the provisions of Paragraph IV shall be made as follows:

(a) For the purpose of an original award of compensation, total permanent disability

awards may be made retroactive to the date of commencement of such total permanent disability if the case falls within the provisions of Paragraph IV hereof, but in no case more than two years anterior to the date of claim therefor.

(b) For the purpose of increasing compensation, total permanent disability awards based—

Upon Paragraphs IV (a) or IV (b) will be made in accordance with the provisions of Paragraphs I (b) and I (c) respectively, of this regulation.

VII. On a properly supported claim, awards of total permanent disability for yearly renewable term insurance purposes and for automatic insurance purposes may be made in accordance with the provisions of Paragraph IV above. Such awards shall be made retroactive to the date of commencement of such total permanent disability if the case falls within the provisions of said paragraph.

VIII. Subject to the limitations contained in paragraph 9 of the converted insurance policy, the effective date of awards of total permanent disability under the contract of converted insurance shall be determined in the same manner as awards of total permanent disability for yearly renewable term insurance purposes.

* * * * *

Section 27 of the World War Veterans' Act of 1924 (43 Stat. 615), provides as follows:

> That all payments of compensation and insurance heretofore made pursuant to a regulation permitting permanent and total disability to be presumed from hospitalization or ratings of less than permanent total

disability shall be deemed valid and no recovery thereof shall be made: *Provided,* That nothing herein shall operate to validate insurance not in force on the date an award thereof was approved, except where premiums have been thereafter accepted.

Section 401 [1] of the War Risk Insurance Act of 1917 (41 Stat. 374), provides as follows:

> That such insurance must be applied for within one hundred and twenty days after enlistment or after entrance into or employment in the active service and before discharge or resignation, except that those persons who are in the active war service at the time of the publication of the terms and conditions of such contract of insurance may apply at any time within one hundred and twenty days thereafter and while in such service: [2] *Provided,* That any person

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[1] Section 401, as amended June 25, 1918, is in effect as of Oct. 6, 1917:

"*Provided,* That nothing herein shall be construed to interfere with the payment of monthly installments, authorized to be made under the provisions of said section 401 as originally enacted, for the months up to and including June 1918: *Provided further,* That all awards of automatic insurance under the provisions of said section 401 as originally enacted shall be revised as of the 1st day of July 1918 in accordance with the provisions of said section 401 as amended." (Extract from section 20 of Act of June 25, 1918.)

[2] The time within which application must be made was extended by the following Joint Resolutions:

(Pub. Res.—No. 22—65th Cong.)

(S. J. Res. 128)

Joint Resolution Granting to certain persons in the active war service an extension of time within which application for insurance may be made under section four hundred and one of the Act entitled "An Act to authorize the establishment of a Bureau of War Risk Insurance in the Treasury Department", approved Sep-

in the active service on or after the 6th day of April 1917, and before the 11th day of November 1918, who, while in such active service, made application for insurance after the expiration of more than one hundred and twenty days after October 15, 1917, or more than one hundred and twenty days after entrance into or employment in the active service, and whose application was accepted and a policy issued thereon, and from whom premiums were collected, and who becomes or had become totally and permanently disabled, or dies or has died, shall be deemed to have made legal application for such insurance and the policy issued on such application shall be valid. Any person in the active service on or after the 6th day of April 1917, and before the 11th day of November 1918, who, while in such service, and before the expiration of one hun-

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tember second, nineteen hundred and fourteen, as amended by the Act approved October sixth, nineteen hundred and seventeen

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the time within which application for insurance may be made as set forth in section four hundred and one of the Act entitled "An Act to authorize the establishment of a Bureau of War Risk Insurance in the Treasury Department", approved September second, nineteen hundred and fourteen, as amended by the Act approved October sixth, nineteen hundred and seventeen, is hereby extended, with respect to every person in the active war service as to whom the time for making application would expire before the twelfth day of April, nineteen hundred and eighteen, so that every such person may make application for insurance up to and including the said twelfth day of April, nineteen hundred and eighteen: *Provided*, That nothing herein shall be construed to effect an extension of the automatic insurance provided for in the said section four hundred and one beyond the twelfth day of February, nineteen hundred and eighteen.

Approved, February 12, 1918.

dred and twenty days after October 15, 1917, or one hundred and twenty days after entrance or employment in the active service, becomes or has become totally and permanently disabled, or dies or has died, without having applied for insurance, shall be deemed to have applied for and to have been granted insurance, payable to such person during his life in monthly installments of $25 each; and any person inducted into the service by a local draft board after the 6th day of April 1917, and before the 11th day of November 1918, who, while in such service, and before being accepted and enrolled for active military or naval service, becomes or has become totaliy and permanently disabled, or dies or has died, without having applied for insurance, shall be deemed to have applied for and to have been granted insurance, payable to such person during his life in monthly installments of $25 each. If he shall die either before he shall have received any of such monthly installments or before he shall have received two hundred and forty of such monthly installments, then $25 per month shall be paid to his widow from the time of his death and during her widowhood; or if there is no widow surviving him, then to his child or children; or if there is no child surviving him, then to his mother; or if there be no mother surviving him, then to his father, if and while they survive him: *Provided, however,* That no more than two hundred and forty of such monthly installments, including those received by such person during his total and permanent disability, shall be so paid. The amount of the monthly installments shall be apportioned between children as may be

provided by regulations: *Provided further,* That each officer and enlisted man attached to the United States ship *Cyclops* on the 4th day of March 1918, and every officer and enlisted man who on said date was a passenger on said vessel shall be deemed to have been granted insurance in the sum of $5,000 permitted under the War Risk Insurance Act.

(Pub. Res.—No. 27—65th Cong.)

(S. J. Res. 133)

Joint Resolution Authorizing the granting of insurance under the Act entitled "An Act to authorize the establishment of a Bureau of War Risk Insurance in the Treasury Department," approved September second, nineteen hundred and fourteen, as amended by the Act approved October sixth, nineteen hundred and seventeen, on application by a person other than the person to be insured

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That insurance under the Act entitled "An Act to authorize the establishment of a Bureau of War Risk Insurance in the Treasury Department", approved September second, nineteen hundred and fourteen, as amended by the Act approved October sixth, nineteen hundred and seventeen, shall be granted by the Bureau of War Risk Insurance on application made by the person to be insured or, subject to such regulations as the bureau may prescribe, by any person within the permitted class as specified in section four hundred and two of said Act: *Provided,* That the person to be insured has been taken a prisoner of war before April twelfth, nineteen hundred and eighteen: *And provided further,* That no one but the insured may designate a beneficiary, and nothing in this resolution shall be deemed to change or affect the permitted class of beneficiaries or impose any obligation on the insured against his will.

Approved, April 2, 1918.

U. S. GOVERNMENT PRINTING OFFICE 1939